

Remarks

Applicant believes that the restriction requirement, imposed as it is at this late date, is incorrect and inappropriate, and respectfully asks that it be lifted and that examination of all claims continue. Indeed, the record of this application shows the incorrectness of the restriction.

The Examiner asserts that the new claims added upon the filing of the RCE on August 19, 2005 (mentioning claims 29-44) necessitate the restriction requirement. Among the “new” claims the Examiner refers to method “claims 34-37” (*sic*: claims 34, 35 and 37) as being a distinct invention, but appears to be unaware that essentially *such method claims have been present during the entire prosecution to date*. More specifically:

- Regarding method claim 34, independent method claim 26, now cancelled, was an original claim as filed January 20, 2004. During prosecution to date, claim 26 was searched, examined, and amended; claim 34 has only a further minor amendment to what was last pending before the RCE filing. The filing of the RCE should continue such examination; indeed, that was the purpose of applicant’s proceeding via an RCE.
- Regarding method claim 35, dependent method claim 28, now cancelled, was also an original claim of this application. Claim 35 is identical to original claim 28.
- Method claim 37, which is dependent on method claim 34, merely adds a structural apparatus characteristic repeated from at least one apparatus claim (*e.g.*, claim 36) which will be examined in any event; no separate method step is added.

Thus, applicant’s method claims represent a continuation of the examination process, and not any departure. During the course of prosecution to date, the Examiner has twice examined

the method claims without requiring restriction for examination purposes. The method claims were *not* newly presented with the RCE. Examination of all claims at this time is appropriate.

The Examiner refers to different subclasses of class 56 as grounds for the restriction requirement – subclass 328.1 for the apparatus and subclass 330 for the method. However, importantly, the record shows that the Examiner has already searched both of such subclasses as in connection with prosecution of the method claims as referenced above. To the extent further searching is needed in either or both of such subclasses by virtue of minor amendments, the filing of the RCE, with its continued inclusion of such method claims, should allow such searching.

Finally, the Examiner is incorrect in asserting that the “harvesting apparatus can be used to harvest crops other [than] cranberries in a cranberry field.” The apparatus is specifically one for harvesting cranberries. Furthermore, each claim is directed to a “cranberry-harvesting apparatus” or “method of harvesting cranberries.” Also consider the following claim limitations:

- “a frame movable over a field of cranberries”;
- “whereby each rod mount is supported such that it moves through the cranberry plants at the speed of the frame to dislodge the cranberries”;
- “including a drive apparatus to move the frame over a field of cranberries”;
- “whereby the dislodged cranberries are picked up by vacuum suction”;
- “an apparatus for harvesting cranberries from a cranberry field”;
- “whereby each dislodging rod is moved through the cranberry plants at the speed of the frame to dislodge the cranberries from the plants”; and
- “moving frame-mounted, free-ended dislodging rods through cranberry plants.”

Furthermore, the specification discloses matter related only to cranberry harvesting. It makes no reference to the apparatus being adapted for use for anything other than cranberry harvesting.

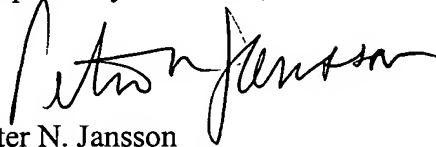
The application states, "There is a need for simple, rapid and efficient, lost-cost method and apparatus to harvest cranberries." The objects of the invention reveal objects related only to cranberry harvesting and not to other crops or types of fruit as the Examiner suggests.

The Examiner has pointed to nothing that would support the conclusion that the device can be used to harvest "other types of fruit" or "to harvest grain." MPEP §806.05(h) does not apply to require restriction of the claims; the apparatus as claimed cannot be used in a materially different method.

For the reasons given, applicant respectfully requests that the restriction be lifted.

No fees are believed to be due in connection with this paper. However, if any fees are due, then the Commissioner is authorized to debit deposit account 10-0270 for the full amount of any such fees, bearing in mind that applicant qualifies as a small entity. Kindly notify the undersigned in the event that the deposit account is debited or credited.

Respectfully submitted,



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February 24, 2006

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